



**IN THE COURT OF COMMISSIONER EMPLOYEES  
COMPENSATION  
(UNDER EMPLOYEES COMPENSATION ACT, 1923)  
OFFICE OF THE JOINT LABOUR COMMISSIONER  
LABOUR WELFARE CENTRE, DISTRICT - WEST, F-BLOCK:  
KARAMPURA, NEW DELHI - 15**

No. CEC/I/WD/16/19 01-04

Dated:- 04/01/2022

In the matter of:-

Sh. Amar Singh @ Neeraj  
S/o Sh. Ram Swarup  
R/o Vill. & Post: Chhatiya  
P.S. Majhala, Tehsil: Shahbad,  
Hardoi, U.P.

Also at:-

Sh. Amar Singh @ Neeraj  
C/o Sh. Pankaj Kumar Sahai  
RZ-96A, Gali No. 10, Deep Enclave,  
Part-I, Vikas Nagar, Uttam Nagar,  
New Delhi-110059

.....Applicant/Claimant

VERSUS

Sh. Ram Kewal @ Ram Karan  
S/o Sh. Ram Dulare  
R/o New House No. 114, Gali No. 1,  
Old Gali No. 47, Ranhaula Vihar,  
New Delhi-110041

Also at:-

Sh. Ram Kewal @ Ram Karan  
Factory Address:- H. No. 4/22,  
Rambir Shokeen ka ghar, Kamruddin Nagar,  
Nangloi, New Delhi

....Respondent/Management

**ORDER**

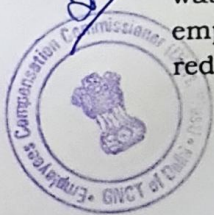
1. This order shall dispose of the claim petition filed on 15.03.2019 by Sh. Amar Singh (hereinafter referred to as 'Petitioner') against Sh. Ram Kewal (hereinafter referred as Respondent) before CEC under Employee Compensation Act, 1923 (herein referred as Act) claiming injury





compensation who is alleged to have suffered injury leading to left hand amputation during and in course of employment.

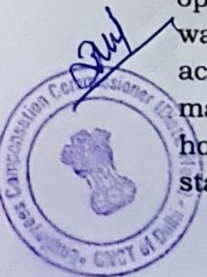
2. The brief fact of the case as per the claim petition is that Sh. Amar Singh urf Neeraj was working in the factory premises of Sh. Ram Keval urf Ram Karan at Kamruddin Nagar, Nangloi for the work of fabrication of plastic gulli. On many occasions, the petitioner requested the owner of the factory to make a stand near the machine to avoid accident by the owner did not listen to him. On the fateful day of 19.07.2016, the petitioner's left hand was stuck in the rope of the bag and went in to the machine which caused amputation of his left hand up to the elbow. He was taken to DDU Hospital by the owner of the factory. On 22.07.2016, statement of injured employee was recorded and FIR no. 332 was registered at P.S. Nangloi. The petition alleged that the accident took place as there was no stand near the machine. The injured employee was drawing Rs.10,000/- per month and was 28 years of age at the time of accident. In the end, the claimant prayed the commissioner employee compensation to grant him relief of accident compensation along with interest @ 18% and maximum penalty of 50%. Along with the claim application for court fees exemption, affidavit, F.I.R., DDU Hospital medical summary and Vakalatnama were also filed.
3. On receipt of the claim, summon was issued to the respondent employer Sh. Ram Keval for appearance before the CEC on 08.05.2019, 24.07.2019, 21.08.2019, 02.09.2019. On 02.09.2019, respondent Sh. Ram Keval appeared and was supplied copy of claim for filing reply on NDOH-19.09.2019. On this date, vakalatnama was filed on behalf of respondent management and reply was later filed on 05.11.2019. In the reply, the management stated that the claim is not maintainable and should be rejected under section 3(b)(i) of the E.C. Act, 1923 because the claimant was under the influence of alcohol as per the MLC dated 19.07.2016 conducted by DDU Hospital. The management was not aware about this bad habit of drinking alcohol by the claimant. It was further stated that, the machine was properly safeguarded from all the sites and there is no negligence and fault of the employer. The claimant got injured due to his own negligence as he was under the influence of alcohol and accordingly not entitled for compensation. All the contents of the claim were specifically denied by the management.
4. The rejoinder was filed by the claimant on 20.12.2019 in which the claimant stated that he was not under the influence of alcohol when he was performing his duties at the time of accident. The respondent employer with the malafide intention has poured alcohol in his mouth to reduce the pain of the claimant. Further, all the points taken by the





management in its reply were denied by the claimant, reiterating and reaffirming the contents of the claim.

5. On dated 04.02.2020, Adv. Sh. R.K. Nain appeared and filed his vakalatnama on behalf of the claimant. On the basis of pleadings of parties and documents available in the case file, following issues were framed:
  - i. Whether petitioner met with an accident out of and in the course of employment with respondent?
  - ii. And if so, what relief and what directions are necessary in this regard?
6. Thereafter, the matter was fixed for evidence of parties on 25.02.2020, 06.03.2020 and 24.03.2020. Due to the lockdown phase-I associated with COVID-19; case could not be taken up between March-July, 2020.
7. The evidence was filed by the claimant on 06.03.2020 and was tendered on 25.08.2020, which was finally cross-examined by the respondent counsel on 10.11.2020. Along with the evidence the claimant had filed the documents:-
  - a) AW-1/1 copy of MLC dated 29.07.2016 of DDU Hospital.
  - b) AW-1/2 copy of FIR dated 19.07.2016 of PS Nangloi.
  - c) AW-1/3 copy of medical documents.
  - d) AW-1/4 copy of electricity bill of the respondent.
  - e) AW-1/5 copy of disability certificate issued by CMO, Hardoi, UP.
  - f) AW-1/6 copy of aadhaar card.
8. The management filed its evidence on 22.12.2020 which was tendered on 15.01.2021 and cross-examined by counsel for petitioner.
9. Finally the matter was kept for arguments on 02.02.2021, 09.02.2021, 22.03.2021, 09.04.2021, 17.09.2021. During this period, the written arguments were filed by the claimant on 02.02.2021 and by the respondent on 17.09.2021.
10. During the cross-examination of the claimant it was informed that his duty was to help the other labours to put plastic bags on the machine. Although, he is working for last 05 years in the company as machine operator, he was not given any documentary proof of appointment. He was engaged in the company by an employee named 'Guddu'. After the accident on 19.07.2016, he was taken to the hospital by the management and all the expenses were borne by the government hospital. The claimant filed FIR No. 329/2016 related to the accident. He stated that he has not taken any alcohol of his own before the accident.





He has not informed the police about the liquor being given to him by the respondent after the accident. The alcohol was given to him as a medicine to release his pain. The management has offered him for some help but he was not given any help and therefore he filed claim before the commissioner.

11. During the cross-examination of respondent, it was informed that he was the proprietor of the company and was manufacturing plastic granules from the plastic waste. At a time of accident, he was not present and received information through telephonic call from another employee Sh. Guddu. When he reached at the place of accident, he found the hand of the applicant was crushed and he immediately took him to the hospital in his car along with the employee Sh. Guddu. He himself incurred the cost of treatment and paid him Rs. 3-4 Lakhs to the injured employee as and when required from time to time by way of cash. The claimant was a helper and was not supposed to operate the machine. He admitted that he does not have any record to show that the injured employee was a helper and not a machine man. While he was taking the claimant to the hospital, he found that he had consumed alcohol but no other employee informed him about the intake of alcohol by the claimant. The respondent submitted that he has not given any alcohol to the injured employee as a medicine to reduce the pain. He informed that the accident took place due to the influence of the alcohol. He admitted that there were no safety guards in the machine as it is a small unit and safety instructions were not given by him in writing to their employees. The management has admitted the salary and age of the claimant and also admitted that he was paid overtime for extra work.

12. On the basis of contents of the claim, WS, Rejoinder, Evidence of parties and documents on record the findings of the CEC is based upon the following facts:

- a) It is an admitted fact that Sh. Amar Singh was the employee of Sh. Ram Kewal and met with an accident on 19.07.2016 while working on a Gulla machine and his left hand got crushed and amputated.
- b) The fact about age and the salary of the claimant has not been disputed by the respondent.
- c) The respondent alleged that the claimant was under the influence of the liquor which caused the accident. The claimant has also not denied intake of alcohol but said that the management has given him alcohol after the accident to reduce the pain.
- d) Both the claimant and the respondent have not been able to prove their version regarding alcohol intake through any of their witnesses.





- e) As per the report of the MLC, the alcohol contain was found 84 mg per 100 ml, which according to the norms is more than the limit prescribed under the law.
- f) The management has taken the objection that they are not liable as per chapter 2, section 3(1)(b)(i) of the Act employer is not liable to pay compensation which is reproduced as under:

*in respect of any [injury, not resulting in death [or permanent total disablement] caused by] an accident which is directly attributable to-*

*(i) The [employee] having been at the time thereof under the influence of drink or drugs, or..*

- g) In the present case the left hand of the claimant employee got injured and according to list of injuries deemed to result in permanent partial disablement- Schedule-1 - Part-II of the Act, the percentage loss of earning capacity is 70% as per the description in Sr. no. 3. The same is evident from the photograph of the injured employee filed along with the petition.
- h) The causal connection between the alcohol content and the accident could not be established by any records.

### 13. Findings:-

According to the management, the claimant was a habitual drinker and if the management was aware about it the management has never given any warning to the claimant neither the management has issued instructions to the claimant to keep away from work when found in the state of alcohol-hood. Since the injured employee was the machine man and was capable of doing machine related work but after amputation is now not able to earn the same as he was doing earlier and therefore his earning capacity is reduced to zero and therefore the objection of management on their non-liability under section 3(1)(b)(i) is not sustainable. In this case the disablement is permanent and total due to functional incapacity. The same is supported by the judgement of Hon'ble Supreme Court of India in Pratap Narain Singh Dev V/s Srinivasa Sabata on the loss of earning capacity causing permanent total disablement. The objection of management regarding non-liability of payment due to liquor intake is not applicable in this case as explained above.

Accordingly, issues framed in this case is decided in favour of the petitioner and against the management.





14. On basis of above findings the CEC is of the considered view that the claimant is entitled for injury compensation from the respondent which is calculated as under:

Calculation of Principal Amount:-

In this case, there is no salary record of claimant-machine operator is available in case file the same is restricted to Rs.8,000/- as per the maximum limit notified under the Act. The age of the claimant is taken as 28 years on the basis of DOB mentioned on DDU Hospital discharge summary and other medical documents and the age factor of 28 years comes to 211.79.

As per Section 4(1)(a) of the Act in this case injury of an employee, Claim amount is calculated as under:-

$$\begin{aligned} & 60\% \text{ of monthly wages } \times \text{ age factor} \\ & = 60/100 \times 8000 \times 211.79 = \text{Rs.}10,16,592/- \end{aligned}$$

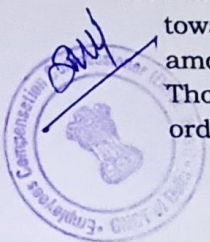
Calculation of Interest :-

Apart from above, since the respondent has failed to release the entitled injury compensation amount within specify period in the Act i.e. within one month date of accident i.e. 19.07.2016. Therefore the respondent is also liable to pay interest @ 12% of the principal amount of Rs.10,16,592/- w.e.f. 20.08.2016 till the date of last date of hearing/date of conclusion of proceedings i.e. 17.09.2021 as per section 4A(3)(a) of the Act. The total interest amount comes to Rs.6,18,980/- which has to be borne by respondent i.e Sh. Ram Kewal.

Calculation of penalty:-

As per the direction of Hon'ble Delhi High Court, at the time of framing of issues, issues regarding applicability of penalty should be framed by the CEC. However, in this case issue regarding penalty were not framed, also no show cause has been issued to the respondent under section 4(A)(3)(b) of the Act and therefore penalty is not imposed while passing this order. The claimant is advised to initiate separate application for claiming penalty amount in this case.

15. The respondent is directed to deposit the amount of (Rs. 10,16,592/- towards principal amount + Rs. 6,18,980/- towards interest) total amounting to Rs. 16,35,572/- (Rupees Sixteen Lakh Thirty Five Thousand Five Hundred Seventy Two Only) by way of demand draft/pay order in the favour of **"Commissioner, Employee's Compensation,**




**District West”** within thirty days of passing of this order. In case the amount is not deposited within 30 days, additional interest shall be calculated @ 12% till the date of realization and recovery proceeding shall be initiated against each of them under section 31 of the Act.

16. As per the direction of Hon'ble Delhi High Court, this order maybe uploaded on the website of Labour Department.

17. This order is being passed after hearing and concluding the matter during the tenure of CEC at West District, Labour Department, GNCTD, Karampura District Office, New Delhi and after getting transferred to Headquarters, Labour Department, GNCTD, Delhi.

Given under my hand and seal of this 29<sup>th</sup> day of December, 2021.

  
(U.K. SINHA)  
Commissioner Employees Compensation/  
Dy. Labour Commissioner